

# STATE WIDE

**New York StateWide Senior Action Council, Inc.**  
275 State Street, Albany, NY 12210 • (518) 436-1006 • Fax (518) 436-7642  
[www.nysenior.org](http://www.nysenior.org)

## TESTIMONY

**GAIL MYERS, DEPUTY DIRECTOR  
NY STATEWIDE SENIOR ACTION COUNCIL**

**JOINT FISCAL COMMITTEES  
BUDGET MEETING ON HUMAN SERVICES  
FEBRUARY 2, 2022**

**STATE BUDGET ISSUES IMPACTING  
OLDER NEW YORKERS AND THEIR FAMILIES  
State Fiscal Year (SFY) 2022-2023  
*(Proposed by the Governor – January 18, 2022)***

Thank you for the opportunity to testify today. My name is Gail Myers and I am the Deputy Director of New York StateWide Senior Action Council (“StateWide.”) We are a grassroots organization with chapters throughout the state. In addition to the input of our members, we learn about problems in the aging and health care delivery systems from the two helplines that we operate through contracts from the NYS Office for the Aging as a result of state budget appropriations, the Managed Care Consumer Assistance Program and our Patients’ Rights Hotline and Advocacy Project. We also are informed by our Senior Medicare Patrol helpline, funded by the federal government, to protect, detect, and report Medicare and Medicaid fraud. These cases inform us on how the aging and healthcare systems’ policies and practices are affecting residents; we then can inform policymakers to see if system corrections can be made.

Our testimony today will focus on the NYS Office for Aging budget, specifically on programs and services that help older New Yorkers who want to remain in their homes and communities as they grow older. We also will highlight some benefit issues that impact older residents that are part of Medicaid.

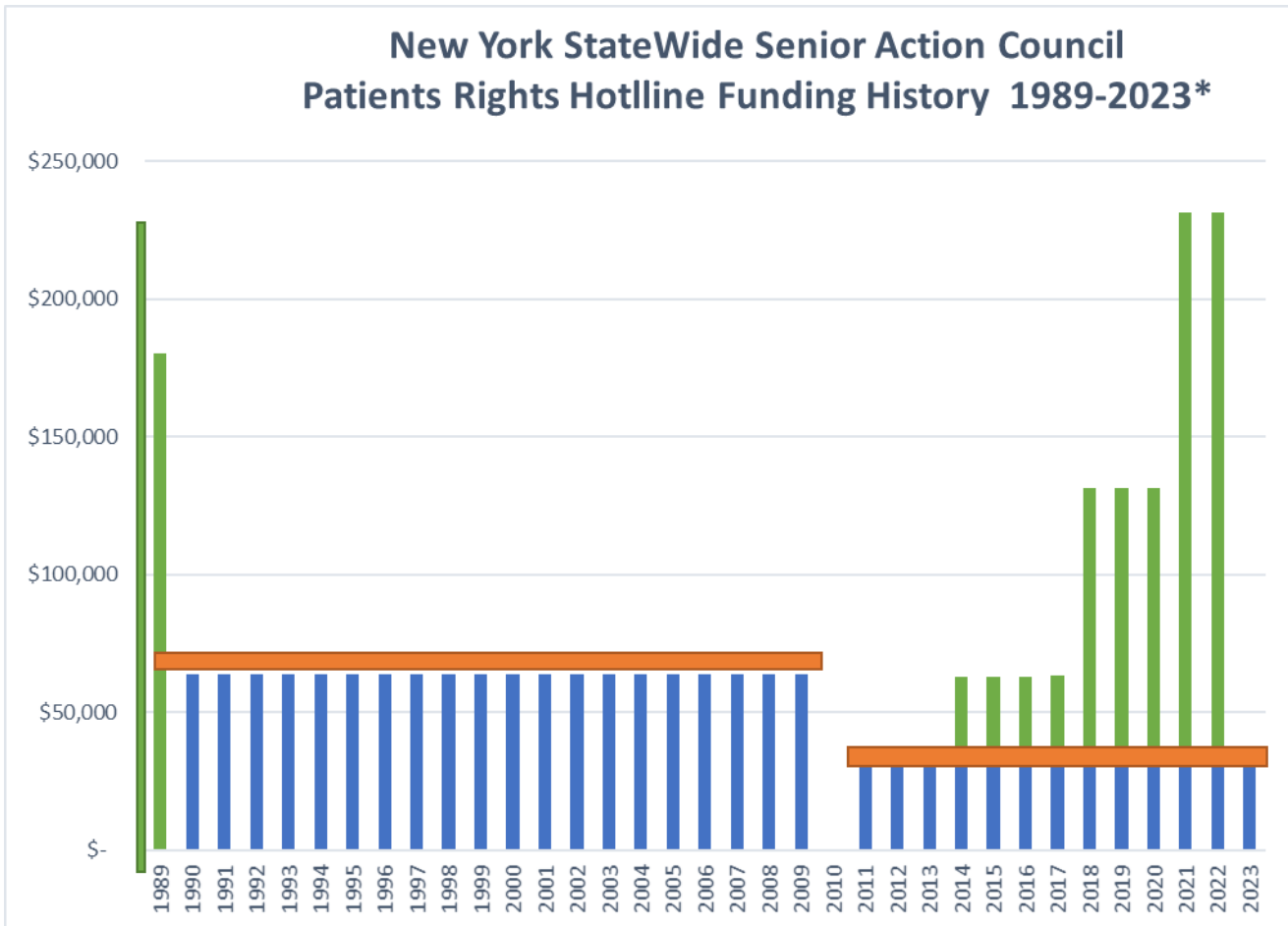
As part of an alliance of advocates that identified a compelling need for an investment in care and a comprehensive roadmap for meeting the needs of aging New Yorkers, we wrote to the Governor urging her to take steps to create a Master Plan for Aging. We were pleased to see the Governor include this in her State of the State Message and allocate \$.5m to NYSOFA to start the process. We request the Legislature’s involvement and assurances that the process is an open one with opportunities for community input.

#### **A. STATEWIDE’S PROGRAMS:**

**Patients Rights Hotline and Advocacy Project:** Since 1987, we have received state budget funding through the NYS Office for the Aging (NYSOFA) to educate and empower seniors to uphold their health care consumer rights. StateWide’s Patients’ Rights Hotline and Advocacy Project originally was funded in SFY 1987-88 at \$180,000 annually. Funding was reduced during economic crises, to a low of \$31,500. However, need has increased with more calls related to the coronavirus, health system changes, rights of dual eligibles (Medicare and Medicaid joint enrollees), the increased demographic of older New Yorkers, the use of observation status in hospitals, the shortage of home care workers, and nursing home quality of care concerns. In SFY 2017-18, funding was increased to \$63,500. In SFY 2018-19 & SFY 2019-20, the Legislature added \$100,000 to *StateWide*’s Patient Rights Helpline to enhance the program, for total program funding of \$131,500. In both SFY 2020-21 and SFY 2021-22, the Legislature added \$200,000 annually, for total program funding of \$231,500. This additional appropriation was much appreciated, especially with the extraordinary amount of questions and concerns during the past year which we have worked hard to address. We are distressed,

however, that NYSOFA still has not contracted with us for any of the SFY2020-21 and SFY2021-22 appropriations for these services that were added by the Legislature. The Governor’s current budget proposes \$31,500 for the StateWide’s Patients' Rights Hotline and Advocacy Project.

Our budget history is reflected in the chart below.



*(Horizontal line shows flat Executive funding of \$63,000. Above the line (since 2014) shows funds added by the Legislature to restore and improve our program. \*2023 represents the Executive Budget proposal)*

Payment for our services has been often delayed and sporadic. This program was not processed at all in FY 2021, while at the height of the pandemic we provided extraordinary services to address the concerns of hospital patients, nursing home residents and their families. Now, in the final quarter of FY2022, only \$63,000 of the allocation has been processed with only half of that paid to us for our services. In essence – we have been rendering services without pay for over a year – almost 2 years. We have incurred debt to cover program expenses. The debt service is not reimbursable by the contract.

**Request:**

*Address delays to ensure timely contract management and prompt payment of voucher reimbursement requests.*

**Restore the program to the SFY 2021-22 level by adding \$200,000 to the current appropriation.** *(Aid to Localities budget A9003/S8003 Page 7, Lines 37-40).*

**Managed Care Consumer Assistance Program (MCCAP):** Since 2004, we have received state budget funding through NYSOFA to provide Medicare enrollment and pharmaceutical assistance counseling to New Yorkers under the Managed Care Consumer Assistance Program. Under the Governor's proposal, *StateWide's* Medicare and pharmaceutical insurance coverage counseling services will continue to be funded by the state without any gap in services and all six groups that provide MCCAP services will continue to be funded at the same level as last year. *StateWide's* current funding is \$354,000 and appears as a specific line item in the SFY19-20 proposed Executive budget. *(Aid to Localities budget A9003/S8003 Page 6, Lines 40-59)*

This funding enables *StateWide's* counselors to assist older New Yorkers in: choosing the Medicare coverage that best meets their needs; with billing problems; with enrollment and benefit information on other initiatives including the Elderly Pharmaceutical Insurance Coverage program (EPIC); and provides updates to the community on coverage issues. Counselors also provide enrollment assistance in the Medicare Savings Program (MSP) that gives low income Medicare enrollees premium relief and the federally funded Low Income Subsidy (LIS)/Extra Help for prescription drug insurance assistance.

**Request:**

*Address delays to ensure prompt payment of voucher reimbursement requests. To date, in our final quarter of operations, we have only received an advance upon contract approval (August 2021) and payment reimbursement of only the first set of vouchers submitted (first quarter of the program year – received during final quarter of operations, January 2022.)*

**Increase funding for StateWide's MCCAP program by \$200,399 so that we can increase capacity to reach more underserved and hard to reach seniors who are not accessing all of the benefits programs for which they rightfully qualify.**

## **B. NYS Office for the Aging (NYSOFA)**

There is an escalating need for services due to the increased number of older New Yorkers and the public policy push to encourage people to receive services in the community rather than in residential institutions. The NYS Office for the Aging's programs delivered by the local offices for aging, including EISEP (Expanded In-Home Services for the Elderly), CSE (Community Services for the Elderly), Wellness in Nutrition and Transportation are vitally important.

We are pleased that the Governor's proposed budget maintains the SFY 2021-2022 level of funding to reduce waiting lists, including the additional \$8m added by the Legislature to address waiting lists. However, additional funding is needed to allow the programs to build the capacity to meet the needs of a growing aging population.

- *Require a report by NYSOFA that addresses unmet need due to insufficient resources or capacity, as well as identifying the services and the number of residents on the Area Agency on Agency current year waiting lists.*

### **EISEP (Expanded In-Home Services for the Elderly)**

The additional funds transferred from Medicaid and allocated to NYSOFA to meet waiting lists are contained in the EISEP section of the Aid to Localities Budget bill, but are not limited to EISEP services. While it is important to address waiting lists for all services to older residents, there is a clear need to invest in home care. An analysis of which services were funded is needed, since it was not required that they be used exclusively for EISEP services. Further, a report is needed to understand the existing barriers that are the root cause for waiting lists for unaddressed EISEP home care services.

#### ***Recommendation:***

- Require NYSOFA review the barriers to spending resources on the EISEP home care program to meet the needs of an aging older population and recommend solutions.
- Incorporate A2590, which has passed the Assembly, requiring an annual report to the Legislature on unmet need due to insufficient resources or *capacity*.

### **Home Care Worker Shortage**

Constituents continue to report unmet needs, particularly in home care services throughout the state, regardless of the ability to pay or source of payment (EISEP, Medicaid, Medicare, long term care insurance or private pay.) In part, this is due to the shortage of personal care home care workers.

The state cannot be truly successful in adopting strategies that support aging in place without addressing the shortage of workers. We urge you to address the capacity issues in a comprehensive manner so that the traditional medical/health home care worker shortage and the aging/EISEP home care worker shortage are addressed together, and that solutions for one sector do not create further problems for the other. This cannot be a Medicaid only solution.

***Recommendation:***

*Provide a livable wage to the home care workforce, including those that work for state funded EISEP services, by paying 150% of regional minimum wage through the “Fair Pay for Home Care Act” (A6329/S5374) and adjust for salary compression within programs that may result.*

**Long Term Care Ombudsman Program (LTCOP)**

LTCOP is a vitally important program to provide resident advocacy. The program investigates and works toward resolution of complaints made by or on behalf of residents. In October 2019, the NYS Comptroller released an audit of the LTCOP; key findings included the lack of presence in facilities due in part to a decline in the number of volunteers combined with a lack of paid regional program staff. As of January 2019, about 600 of the approximately 1,500 LTC facilities in the State – about 40 percent – had an assigned volunteer ombudsman, leaving the remaining 900 facilities to be covered by only 50 paid local staff, which is about half the recommended minimum number. Eleven of the 15 regional programs fell short of the recommended minimum number of staff for the federal fiscal year ending September 30, 2018, and about 30 percent of facilities were not visited by an ombudsman, leaving residents with reduced access to an advocate working on their behalf.

The presence of LTCOP in long term care facilities during the pandemic would have improved communication with family members, ensured residents rights were respected, and enhanced efforts to maintain a regimen of infection control. The state followed federal guidance and blocked visitation by ombudsmen to mitigate the spread of the virus. Further compounding the problem, there is insufficient paid staff in the program to respond to the many complaints that could have been handled remotely, and the volunteers that are the majority of the ombudsmen are older themselves and were self-isolating to minimize their own risk of contracting the coronavirus.

The Executive budget provides \$150,000 for a volunteer retention stipend funding pool that is to be shared with volunteers in the Health Insurance Information, Counseling and Assistance Program (HIICAP.) Funding of \$1.621m is added to the Health Budget to implement Chapter 759 of the Laws of 2021, the "long-term care ombudsman program reform act."

***Recommendations:***

- *Increase program budget, but tie the appropriation to annual reports that detail the progress toward increasing the number of paid staff to the recommended minimum number of staff.*
- *Support recruitment and retention of volunteers to ensure that the program meets national standards for facility visitation.*
- *Require that annual LTCOP reports include the degree of effort to increase the number of family councils in long term care facilities.*

**C. Protecting and Improving Benefits for Older Residents**

**Elderly Pharmaceutical Insurance Coverage (EPIC)**

EPIC is part of the Elder Law, but administered by the NYS DOH that contracts out the implementation of the program. The current contractor is Magellan Health. The EPIC program has been a vital resource for older New Yorkers, has helped individuals afford their prescription drug out of pocket costs – thus removing cost disincentives to adhering to a prescribed medical regimen – and has helped to lift many out of poverty by supplementing their Medicare Part D coverage and providing premium assistance to the lowest income members.

We seek improved transparency of the program, and that any administrative changes are made only following consumer advice and input. We have proposed legislation to address the concerns that have been brought to our attention by consumers that call our Helpline. The bill would keep the application a simple process, ensure that a cost of living benefit change does not throw someone off the program or change their benefit bracket, and allows Medicare Part D enrollees under age 65 to apply.

***Recommendation:***

*Support S4603/A5422 to expand EPIC by including persons with disabilities younger than age 65, so that EPIC works for everyone on Medicare regardless of age, improve the transparency and accountability of the EPIC program by reinstating the consumer advisory panel, restore the requirement for an annual report to the Legislature and reverse administrative changes that resulted in a new and onerous EPIC application.*

**The Medicare Savings Program (MSP)** is funded through a state and federal partnership, administered and budgeted within the state’s Medicaid program. The federal government allows for several state options that will *allow the state to save money*.

Currently the MSP covers Medicare enrollees up to 135% of the federal poverty level (FPL) and *StateWide* and an alliance of advocates have pursued increasing that threshold which would also streamline and increase the number of Medicare enrollees that are eligible for the fully federally funded Extra Help program. This expansion would reap savings for the state only funded EPIC program, allowing more New Yorkers to receive a fully paid federal benefit. We urge you to invest in coverage for those enrolled in Medicare to ensure affordability of coverage.

***Recommendation:***

- *Increase the income eligibility for the Medicare Savings Program to 200% FPL.*

**Medicaid**

As part of an alliance of advocates, *StateWide* urged the Executive to prevent widespread Medicaid coverage loss when the Public Health Emergency (PHE) ends and enrollees who are also covered by Medicare need to recertify for coverage. Our proposal would also remedy a Medicaid eligibility disparity that discriminates against older adults and individuals with disabilities who are enrolled in Medicare by making them eligible for Medicaid at a much lower income level than the general population and with an asset test that is not required of other applicants. We are pleased that the Executive Budget includes these provisions that will provide continuity of care and benefits. (Health and Mental Hygiene Article VII Legislation Part N.) The proposal would be in effect starting January 1, 2023. We urge to support this Medicaid expansion for Medicare enrollees and to create a temporary solution for any enrollees that would otherwise lose their benefits should the PHE end sooner.

*StateWide* urges improvement in policies that enhance the ability of people to obtain and retain home- and community-based long-term services and supports, which provide for higher satisfaction, lower cost, and abide by the right to live in the most-integrated setting (and uphold the Olmstead v. LC decision.)

***Recommendations:***

- Accept the Executive proposal to eliminate the Medicaid Resource Test for eligibility and raise the income level for those in the “Aged, Blind & Disabled” category from 87% to 138% of the FPL. Address the need to



protect anyone currently enrolled in Medicaid from losing their benefits prior to January 1, 2023.

- Eliminate the Medicaid global spending cap in favor of adopting a Medicaid budget that realistically spends what is necessary to provide the program New Yorkers need. (A226/S5255)
- Repeal SFY 2020-21 Medicaid cuts to home care services that extended the resources look back from 30 days to 2 ½ years for new community Medicaid enrollees, implementation of which has been temporarily delayed due to the federal Maintenance of Effort requirements during the Public Health Emergency.
- Repeal SFY2020-21 Medicaid cuts to home care for new enrollees that limits access to home care coverage by increasing the number and type of activities of daily living requiring assistance, implementation of which has been temporarily delayed due to the federal Maintenance of Effort requirements during the Public Health Emergency.

Thank you for the opportunity to testify today.